IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3732 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARAYAN METAL INDUSTRIES - Petitioner(s)

Versus

AMRUTLAL JAYCHAND SHAH - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

MR KB MODI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 12/08/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to quash and set aside the award dated 15.12.1993 passed by the Labour Court,

Ahmedabad in Reference (LCA) No. 183 of 1991 as also the order dated 18.04.1995 passed in Application no. 152 of 1994 in the aforesaid reference.

2.0 The petitioner herein is an Industry engaged in the business of metal works. The respondent was working as a Manager in the petitioner firm. It is the case of the petitioner that the respondent had left the job on 27.08.1989 at his own accord as he wanted to start his own business.

2.1 Thereafter, the respondent raised a dispute which, ultimately, culminated into a reference being Reference (LCA) No. 183 of 1991. It is the further case of the petitioner that the Labour Court had disposed of the said Reference by ex-parte award dated 15.12.1993. The petitioner, on having come to know about the said award, preferred Application No. 152 of 1994 for restoration of the main Reference. The Labour Court by order dated 18.04.1995 dismissed the said application of the petitioner. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. Learned advocate

appearing for the petitioner has produced the communication dated 12.08.1997 which is taken on record. Having gone through the said communication, it is well established that the petitioner had informed the respondent workman to resume his duties immediately. However, the respondent workman had not resume the duties for reasons best known to him. Moreover, it is also stated that the petitioner Company is already closed down. In above view of the matter, the impugned award of the Labour Court qua granting the respondent reinstatement in service cannot be implemented.

4.0 However, so far as the direction with regard to the grant of back wages is concerned, the Labour Court has not given any cogent reasons as to on what basis it has awarded the same. Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman cannot have automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1 In the case of General Manager, Haryana Roadways v.

Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting the respondent back wages is required to be quashed and set aside.

5.0 In above view of the matter, the impugned award of the Labour Court qua granting reinstatement in service cannot be implemented in view of the subsequent development; and, the award qua granting back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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